

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 298 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

N.C. NAIR

Versus

STATE OF GUJARAT & ORS.

Appearance:

MR JD AJMERA for Petitioner

MR HL JANI for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 17/12/96

ORAL JUDGEMENT

1. Heard learned counsel for the parties. At the outset, it is to be mentioned that the petitioner has not filed any order in this Special Civil Application which adversely affect any of his rights.

2. The petitioner has prayed for quashing and setting aside of the impugned order and all the subsequent proceedings taken in pursuance of the same,

and to restrain the respondents from dispossessing the petitioner from the premises in question, but the order has not been filed. Now the petitioner has filed a copy of the order of the Mamlatdar dated 28th January, 1985 under which the petitioner was directed to hand over the possession of the house in question. From the order aforesaid, it comes out that the District and Session Judge, Bhuj had passed some order in Civil Miscellaneous Application No.20/81, but the grievance of the petitioner is that he has no notice of such an order nor any opportunity has been given to him before passing of the said order. It is a fact that the petitioner has been protected by this court for all these years. It is not in dispute that the premises bearing no. TBZ-N-37, Gurunagar, Gandhidham belonged to one Vishvanathsingh who died without making any testamentary disposition of the same and without leaving any heir. The escheat proceedings in respect of this property has been taken by the respondent and the petitioner had approached to this court twice earlier also. On both the occasions, the Special Civil Applications filed by the petitioner has been withdrawn on the ground that the respondent-counsel, who was appearing for the Government had given assurance that the orders shall be passed after giving an opportunity to the petitioner. The petitioner claims the interest in the property as a tenant of Late Vishvanathsingh. The petitioner is not claiming any title in the property nor is claiming any interest therein under some testamentary disposition. His only claim is of tenancy right. The counsel for the petitioner when asked by the court has failed to produced any evidence before this court to show and establish his tenancy right, but the counsel for the petitioner contended that the tenancy right may be oral and in case the opportunity would have been given by the concerned authority to the petitioner, he would have established the same. In case the petitioner establishes his tenancy right in the property in question then certainly the respondents will have no right to dispossess him, but he will become the tenant of the respondent-Government and Government will take the symbolic possession. The Mamlatdar has passed the order on 28th January, 1985 without giving notice to the petitioner, which position is not disputed by the counsel for the respondent. At no stage, the plea of the petitioner that he is the tenant of the premises of Late Vishvanathsingh has been adjudicated.

3. In view of this fact, I consider it appropriate to dispose of this petition with the direction to the District Session Judge, Bhuj to decide this issue after

giving an opportunity of hearing and producing the evidence to the petitioner. The order passed by the Mamlatdar on 28th January, 1985 is set aside and the petitioner is directed to approach to the District Sessions Judge, District Court, Kutch at Bhuj with an application which shall be registered as Miscellaneous Application and District Judge shall make an inquiry thereon in accordance with law and pass the necessary order. The District Judge may take care that the District Magistrate, Bhuj also be given notice of the said application and be afforded an opportunity of producing the evidence. In case, the matter is decided against the petitioner then the question whether the petitioner should be allowed to retain the possession on payment of costs at market price of the property as he is in possession thereof for last many years should also be considered. The writ petition stands disposed of in the aforesaid terms. It is made clear that till the matter is decided by the District Judge, Kutch at Bhuj the petitioner shall be permitted to remain in possession of the property. Rule is made absolute in the aforesaid terms with no order as to costs.

zgs/-